UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,299	12/07/2001	Tatu Ylonen	BER-026	8259

23973 7590 07/31/2009

DRINKER BIDDLE & REATH
ATTN: INTELLECTUAL PROPERTY GROUP
ONE LOGAN SQUARE
18TH AND CHERRY STREETS
PHILADELPHIA, PA 19103-6996

EXAMINER	
POPHAM, JEFFREY D	
ART UNIT	PAPER NUMBER
2437	

MAIL DATE	DELIVERY MODE
07/31/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TATU YLONEN, TERO KIVINEN, and MARKUS LEVLIN

Appeal 2008-003252
Application 10/020,299
Technology Center 2400

Decided:[1] July 31, 2009

Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and
JEAN R. HOMERE, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-74. Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b). We affirm

A. INVENTION

The invention at issue on appeal concerns generally the technology of controlling the transmission of digital information packets between an insecure information network and a protected domain. In particular, the invention concerns the technology of combining the so-called application gateway functionality to a firewall that controls the transmission of TCP/IP-packets (Transmission Control Protocol/Internet Protocol). (Spec. 1.)

B. ILLUSTRATIVE CLAIM

Claim 1 further illustrates the invention as follows:

> 1. A method for handling digital data packets at a logical borderline that separates an untrusted packet-switched information network from a protected domain, comprising the steps of:
>
> - intercepting, at a packet processor part, a packet that is in transit between the untrusted packet-switched information network and the protected domain,
>
> - examining the packet at the packet processor part in order to determine, whether the packet contains digital data that pertains to a certain protocol,

- if the packet is not found to contain digital data that would pertain to said certain protocol, processing the packet at the packet processor part, and

- if the packet is found to contain digital data that pertains to said certain protocol, redirecting the packet to an application gateway part and processing the packet at the application gateway part according to a set of processing rules based on obedience to said certain protocol; wherein the packet processor part is a kernel mode process running in a computer device and the application gateway part is a user mode process running in a computer device.

C. REFERENCES

The Examiner relies on the following references as evidence:

Poier	US 2002/0124090 A1	Sep. 5, 2002 (filed Aug. 20, 2001)
Gbadegesin	US 6,754,709 B1	Jun. 22, 2004 (filed Mar. 29, 2000)

Leech et al., RFC 1928- *SOCKS Protocol Version 5*, 1-8 (1996), available at http://www.faqs.org/rfcs/rfc 1928.html.

Cheng et al., *WTCP: an Efficient Transmission Control Protocol for Wired/Wireless Internetworking*, Proc. Natl. Sci. Counc. ROC(A), Vol. 24, No. 3, (2000), Received (1999) 176-185.

Ross et al., *3.3 Connectionless Transport: UDP*, 1-6, (2000), available at http://web.archive.org/web/20010222022253/http://www-net.cs.umass.edu/kurose/transpor...

The TCP Datagram, *I wanted to know and now you can too (part 2)*, 1-3, (2001), available at

http://web.archive.org/web/20010408184021/http://www.daemon.org/tcp.html.

D. REJECTIONS

The Examiner rejects the claims on appeal as follows:

Claims 1-3, 7, 8, 12, 14, 19-31, 33-40, 43-46, 49-55, 58-63, 66-70, 73, and 74 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Gbadegesin.

Claims 4, 15-17, 41, 42, 47, 48, 56, 57, 64, 65, 71, and 72 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Gbadegesin and Poier.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Gbadegesin, Poier, and TCP.

Claims 9, 10, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Gbadegesin and UDP.

Claims 11 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gbadegesin in view of Cheng.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Gbadegesin, Poier, and Leech.

II. ISSUE

Have Appellants shown error in the Examiner's initial showing of anticipation of independent claim 1? Specifically, does Gbadegesin teach determining if data in the packet pertains to a certain protocol?

Have Appellants shown error in the Examiner's initial showing of obviousness of independent claim 41?

III. PRINCIPLES OF LAW

35 U.S.C. § 102

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

Appellants have the opportunity on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.,* 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted).

IV. ANALYSIS

At the outset, we note that Appellants' Brief does not provide a Summary of the Claimed Invention for each of the independent claims as required by 37 C.F.R. § 41.37 (c)(1)(v). (App. Br. 6-9). Appellants maintain that independent "claims 43 and 47 include limitations similar to

claims [sic] 39 and 41, respectively," and independent claims 53, 62, 64, 66, 68, 69, and 71 "variously include features similar to claims 1, 39, or 41, recited in the form of a system, device, or software program" and provide no corresponding summary or correlation of the "means plus function" limitations. Rather than remand the case for a proper Summary of the Claimed Invention, we will address Appellants' arguments with respect to a representative claim.

Appellants' first argument addresses the first group including independent claim 1. We select independent claim 1 as the representative claim for this grouping. Appellants argue that one fundamental difference between the claimed invention and the cited art is that the claimed invention examines the packet to determine if the digital data in the packet pertains to a certain protocol. Appellants contend that none of the cited art discloses or suggests determining if data in the packet pertains to a certain protocol. (App. Br. 11). Appellants present their contention using an analogy to a packet as a box and the contents of the box are the data within the packet. Appellants further contend that observing the box (packet) provides no information on the contents of the box (data in the packet) and without examining the contents of the box (data in the packet), there is no way to determine if the contents (data) has certain characteristics. The present claims recite determining if the data in the packet pertains to a certain protocol. (App. Br. 11-12). Appellants contend that Gbadegesin describes examining the packet itself rather than determining if the data in the packet pertains to a certain protocol. (App. Br. 12).

The Examiner maintains that the teachings of Gbadegesin teaches the invention as recited in independent claim 1, and that Appellants' arguments

are not commensurate with the express language of independent claim 1. (Ans. 31-32). We agree with the Examiner and disagree with Appellants' contention. We find that Appellants' arguments go beyond the language recited in independent claim of 1 which merely states "examining the packet at the packet processor part in order to determine, whether the packet contains digital data that pertains to a certain protocol."

Appellants argue that neither module 106 nor proxy 104 in Gbadegesin determines the protocol of the data in the packet or bases any decision upon such a determination. (App. Br. 13). Appellants contend that the "port-redirect" command is not a protocol that the digital data of packets have to satisfy, instead, the destination packets (i.e. TCP Port 80) determines whether the packet is directed to proxy 104. Therefore, the "certain protocol," as recited in claim 1, is not taught or suggested by Gbadegesin" (App. Br. 14). Appellants also contend that "Gbadegesin does not disclose determining if the data in the packet conforms to a certain protocol (HTTP). The data in the packet is not examined at all." *Id.* Appellants again rely upon the box analogy and contend that examining the packet to determine if the data in the packet pertains to a certain protocol has not been met. We disagree with Appellants' contentions and find that Appellants' arguments goes beyond the limitations recited in independent claim 1, which does not specifically and expressly recite that the data in the packet is examined. Rather, it merely states "examining the packet" without specifically addressing an examination of the data therein. (App. Br. 14). While there is a subtle difference, the difference is sufficient enough to support the Examiner's interpretation of the claim language and the application of the prior art teachings of Gbadegesin thereto. Therefore, Appellants' arguments

are not persuasive of error in the Examiner's initial showing of anticipation. Thus, we will sustain the rejection of representative independent claim 1. Therefore independent claims 39, 43, 51, 53, 62, 66, 68, and 69 and their respective dependent claims will fall with representative claim 1.

With respect to Appellants' second grouping of claims (App. Br. 15-16), we select independent claim 41 as the representative claim for this grouping and will address Appellants' arguments thereto. Appellants merely restate the language of independent claim 41 and contend that the Examiner's reliance upon the Poier reference for teaching perpending a header does not teach the above identified elements which are not taught by the Gbadegesin reference. We find Appellants' contention to not specifically identify any separate arguments for patentability of independent claim 41 beyond those contentions advanced with respect to independent claim 1. Appellants similarly rely upon the arguments advanced with respect to independent claims 1 and 41 for each of the separate contentions with respect to independent claims 47, 64, and 71. Therefore, we will sustain the rejection of claims 4, 15-17, 42, 47, 48, 56, 57, 64, 65, 71, and 72 which have been grouped by Appellants with independent claim 41.

With respect to Appellants' third-sixth groupings of claims (App. Br. 16-17), Appellants merely rely upon the arguments advanced with respect to independent claim 1, which we did not find persuasive of the error in the Examiner's initial showing of anticipation. Similarly, the arguments do not show error in the Examiner's initial showing of obviousness of these claims. Therefore, we will sustain the rejection of dependent claims 5, 6, 9, 10, 11, 13, 18, and 32.

V. CONCLUSION

For the aforementioned reasons, the Appellants have not shown error in the Examiner's initial showing of anticipation or obviousness.

VI. ORDER

We affirm the anticipation rejection of claims 1-3, 7, 8, 12, 14, 19-31, 33-40, 43-46, 49-55, 58-63, 66-70, 73, and 74; and we affirm the obviousness rejections of claims 4-6, 9, 10, 11, 13, 15-18, 32, 41, 42, 47, 48, 56, 57, 64, 65, 71, and 72.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

rwk

DRINKER BIDDLE & REATH
ATTN: INTELLECTUAL PROPERTY GROUP
ONE LOGAN SQUARE
18TH AND CHERRY STREETS
PHILADELPHIA, PA 19103-6996